

1-24-2017

State v. Pruett Appellant's Brief Dckt. 44352

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Pruett Appellant's Brief Dckt. 44352" (2017). *Not Reported*. 3460.
https://digitalcommons.law.uidaho.edu/not_reported/3460

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
322 E. Front Street, Suite 570
Boise, Idaho 83702
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44352
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2015-8770
v.)	
)	
CATHERINE HELEN PRUETT,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, forty-nine-year-old Catherine Helen Pruett entered an *Alford* plea¹ to felony possession of a controlled substance. The district court withheld judgment and placed her on probation for a period of five years. Ms. Pruett later admitted to violating the terms of her probation, and the district court revoked the withheld judgment, imposed a unified sentence of five years, with one year fixed, and retained jurisdiction. On appeal, Ms. Pruett asserts the district court abused its discretion when it retained jurisdiction rather than place her on probation.

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

Statement of the Facts & Course of Proceedings

Boise Police Department officers responded to a reported domestic disturbance at the home of Charles Parker. (Presentence Report (*hereinafter*, PSI), p.4.)² Mr. Parker told the officers that his girlfriend, Ms. Pruett, had violated a protection order by showing up at his home and forcing her way inside. (PSI, p.4.) He reported Ms. Pruett pushed him, hit him with her fists, and hit him with a 2x4. (PSI, p.4.) Mr. Parker also stated Ms. Pruett had been under the influence of methamphetamine. (PSI, p.4.) Officers confirmed a protection order was in place, but it showed Ms. Pruett as the petitioner and Mr. Parker as the respondent. (PSI, p.4.)

Ms. Pruett eventually admitted to the police that she went to Mr. Parker's home, but denied assaulting him. (PSI, p.4.) After being told she was going to jail, Ms. Pruett gave police permission to retrieve her identification from her purse. (PSI, p.4.) Officers found a baggie containing a crystal substance inside the purse. (PSI, p.4.) With Ms. Pruett's consent, officers searched her master bedroom and found a container with methamphetamine and marijuana inside a closet. (See PSI, p.4.) Ms. Pruett reportedly indicated that Mr. Parker planted the drugs in the purse and closet. (See PSI, p.4.)

The State charged Ms. Pruett by Information with one count of possession of a controlled substance, felony, I.C. § 37-2732(c), and one count of domestic battery, misdemeanor, I.C. §§ 18-903(a) and 18-918(3)(b). (R., pp.45-46.) Ms. Pruett entered not guilty pleas on both counts. (R., p.53.)

Pursuant to a plea agreement, Ms. Pruett later agreed to enter an *Alford* plea to the possession of a controlled substance count, and the State agreed to dismiss the

domestic battery count. (R., pp.60-70.) The district court accepted Ms. Pruett's *Alford* plea. (R., p.60.) The district court subsequently withheld judgment and placed Ms. Pruett on probation for a period of five years. (R., pp.88-93.)

About three months later, the State filed a Motion for Probation Violation (Agents Warrant) alleging Ms. Pruett had violated the terms of her probation. (R., pp.129-132.) Ms. Pruett then admitted to violating the terms of her probation by committing the new offense of filing a false report to '911', misdemeanor, and by using methamphetamine on three separate occasions. (Tr., May 4, 2016, p.5, L.9 – p.12, L.18; see R., p.130.) The district court accepted Ms. Pruett's admissions and found Ms. Pruett was in violation of her probation. (Tr., May 4, 2016, p.12, Ls.19-24.)

At the probation violation disposition hearing, the State recommended the district court impose a unified sentence of seven years, with two years fixed, and retain jurisdiction. (Tr., May 18, 2016, p.6, L.23 – p.7, L.7.) Ms. Pruett recommended the district court impose a unified sentence of five years, with one year fixed, suspend the sentence, and place her back on probation. (Tr., May 18, 2016, p.14, Ls.7-18.) The district court revoked the withheld judgment, imposed a unified sentence of five years, with one year fixed, and retained jurisdiction. (R., pp.165-67.)

Ms. Pruett filed a timely Motion to Reconsider Sentence Pursuant to I.C.R. 35. (R., pp.168-70.) The district court later issued an Order Denying Rule 35 Motion.³ (R., pp.173-78.)

² All citations to the PSI refer to the 35-page PDF electronic version of the Presentence Report and attachments.

³ At this time, Ms. Pruett does not challenge on appeal the district court's decision to deny her Idaho Criminal Rule 35 motion.

Ms. Pruett filed, pro se, a Notice of Appeal timely from the district court's Order Denying Rule 35 Motion, and, by extension, the district court's Order Revoking Withheld Judgment, Judgment of Conviction and Order of Retained Jurisdiction. (R., pp.182-85; see I.A.R. 14(a).)

The district court subsequently suspended Ms. Pruett's sentence and placed her on probation for a new period of five years. (Order Suspending Sentence and Order of Probation, filed Dec. 22, 2016.)⁴

ISSUE

Did the district court abuse its discretion when it retained jurisdiction after revoking the withheld judgment, rather than place Ms. Pruett back on probation?

ARGUMENT

The District Court Abused Its Discretion When It Retained Jurisdiction After Revoking The Withheld Judgment, Rather Than Place Ms. Pruett Back On Probation

Ms. Pruett asserts the district court abused its discretion when it retained jurisdiction after revoking the withheld judgment, rather than place her back on probation. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

⁴ The Order Suspending Sentence and Order of Probation is the subject of a Motion to Augment, filed by Ms. Pruett contemporaneously with this Appellant's Brief.

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Ms. Pruett does not allege that her sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Ms. Pruett must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Mindful of the fact the district court has since placed her back on probation (see Order Suspending Sentence and Order of Probation, filed Dec. 22, 2016), Ms. Pruett asserts the district court abused its discretion when it retained jurisdiction after revoking the withheld judgment, rather than place her back on probation. At the disposition hearing, Ms. Pruett’s counsel told the district court Ms. Pruett “has struggled with substance abuse addiction. . . . she recognizes that part of her substance abuse issue, the underlying cause, is having not dealt with the passing of her father.” (Tr., May 18, 2016, p.10, L.23 – p.21, L.9.) Her counsel stated she sought to engage in counseling “to make sure she addresses that issue in an appropriate, healthy and legal fashion to avoid falling back into the trap of succumbing to her own substance abuse”

(Tr., May 18, 2016, p.11, Ls.9-16.) Ms. Pruett's counsel believed "that a retained jurisdiction is a level of intervention or level of care that's unnecessary at this time."

(Tr., May 18, 2016, p.12, Ls.9-11.) Further, counsel noted Ms. Pruett "maintained contact with her probation officer in spite on the failed UAs, continued to attend and test for her UAs, that she was employed, she did not abscond from supervision."

(Tr., May 18, 2016, p.13, Ls.5-9.)

Based on the above considerations, Ms. Pruett submits the district court abused its discretion when it retained jurisdiction after revoking the withheld judgment, rather than place her back on probation.

CONCLUSION

For the above reasons, Ms. Pruett respectfully requests that this Court reduce her sentence as it deems appropriate.

DATED this 24th day of January, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of January, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

CATHERINE HELEN PRUETT
INAMTE #117724
SBWCC
13200 S PLEASANT VALLEY ROAD
KUNA ID 83634

MICHAEL REARDON
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas